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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-ninth session

SUMMARY RECORD OF THE 1471st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 2 August 2001, at 10 a.m.

Chairman: Mr. SHERIFIS

later: Mr. RESHETOV
(Vice-Chairman)

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Eleventh to fourteenth periodic reports of Trinidad and Tobago (continued)

THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION; THIRD WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (continued)

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Eleventh to fourteenth periodic reports of Trinidad and Tobago (continued) (CERD/C/382/Add.1; HRI/CORE/1/Add.110)

1. At the invitation of the Chairman, the members of the delegation of Trinidad and Tobago resumed their places at the Committee table.

2. Mr. MAHARAJ (Trinidad and Tobago), replying to questions asked by members of the Committee at the previous meeting, underscored the great importance his Government placed on promoting racial harmony. Regarding the Ombudsman's power to investigate and to initiate litigation, any administrative injustice was within his purview and he could therefore investigate allegations of racial discrimination or denial of equal treatment by public officials, and had done so. Under the current system, he could make recommendations to the government department involved, which could act upon them at its discretion, and if no action was taken the Ombudsman could submit a special report to Parliament. The Government was now drafting new legislation that would allow the Ombudsman to apply to the High Court to have his orders enforced.

3. Trinidad and Tobago was the first country in the Caribbean region to introduce legislation as radical as its new Equal Opportunity Act. It would come fully into effect when all members of the Equal Opportunity Commission and Equal Opportunity Tribunal and of subsidiary bodies such as the panel of religious advisers had been appointed.

4. There had been allegations of unequal treatment by the independent service commissions, which were responsible for appointing all public servants but were not accountable to any higher authority. The Government, recognizing the need for reform, had therefore acted to amend the Constitution to make the independent service commissions accountable to the courts and to Parliament, which had set up a special committee, composed of independent, opposition and government members of Parliament, to oversee the commissions.

5. The Government believed its existing laws prohibiting the operation and establishment of organizations promoting racism were adequate; but in the interests of improving its legal and investigatory machinery to combat racism, it would gladly consider any recommendations by the Committee and would compare its own with other countries' legislation in the field.

6. Described by Archbishop Desmond Tutu as a "rainbow country", Trinidad and Tobago was a uniquely diverse nation that drew upon its rich Indian, African, Portuguese, Chinese and other heritages. The Government had used the culture of each group and all its religions to promote cohesion, featuring them in all its public festivals, and was determined to ensure that machinery was in place to prevent any exclusion.

7. Ms. SIRJUSINGH (Trinidad and Tobago) said that the Office of the Ombudsman had developed a strategy for the period 2000-2003 to improve its efficiency, in keeping with the new legislation governing it. In the meantime, the Ombudsman's 2000 annual report was being made available to the Committee. Information would be provided subsequently on what action, if any, had been taken on the complaints to the Ombudsman referred to in paragraph 10 of the report (CERD/C/382/Add.1).

8. Persons or organizations contravening section 7 of the Equal Opportunity Act (CERD/C/382/Add.1, para. 15) were not liable to criminal prosecution but their cases could be reported to the Equal Opportunity Commission, which would investigate them, try to mediate them and, if appropriate, refer them to the Equal Opportunity Tribunal, which could then order sanctions and award compensation to victims. Such individuals or organizations were, however, liable to criminal sanctions under the Sedition Act which, as indicated in the report (para. 43) defined seditious intention as including incitement to racial hatred.

9. Laws which perpetuated or created racial discrimination were not automatically null and void if they were inconsistent with the Constitution, as implied in the earlier periodic report (CERD/C/224/Add.1, para. 2), but needed to be formally challenged before the High Court. Such a challenge had, for example, been brought successfully against legislation governing the sugar cane farmers, and recent legislation had repealed specific criminal law provisions of the Spiritual Reform Act that had been found to be discriminatory to certain minority groups.

10. Some mechanisms were now in place to ensure the publicizing of the Convention, the periodic reports and the Committee's concluding observations. Periodic reports were now published together with a copy of the Convention and circulated, inter alia, to government ministries and Parliament, and they had received wide coverage in the press. Moreover, one of the duties of the Human Rights Unit of the Ministry of the Attorney-General and Legal Affairs was to publicize those documents and it would be doing so on the Attorney-General's Web site to be launched later in the year. The delegation had no estimate of the percentage of persons in the country with access to the Internet, although it would try to supply that information later, but all public libraries were linked to the Internet and the Government was trying to provide access to all schools.

11. The Equal Opportunity Act prohibited discrimination in employment in both the public and the private sectors; and, in addition, a Basic Conditions of Work Bill 2000, soon to be introduced into Parliament, provided that all were entitled to equal pay for equal work regardless of religion, gender, race or ethnicity. There was no evidence that the lack of complaints in that field was due to public unawareness of the possibility of bringing them. Remuneration was always pegged to costs, not to individuals, and collective bargaining was considered an effective means to ensure equal remuneration.

12. Private schools were now covered by the prohibition against discrimination under the Equal Opportunity Act. In the past, there had been an application for judicial review when a Catholic school pupil had been suspended for modifying her school dress in the Muslim manner, and the case had been won. The Committee would be sent information on any cases brought, under section 7 of the Education Act, for refusal of admission to schools on the basis of religion.

The delegation also had no information at the moment on how legislation governing discrimination in nightclubs had been enforced, and if any licences had been revoked. That was perhaps an indication that the new Equal Opportunity Act had indeed reduced discrimination. The Government would consider the Committee's suggestion that the Police Complaints Authority should be given clear instructions to identify cases of discrimination by police officers and the power to investigate complaints itself.

13. Regarding indigenous people, not one pure Amerindian remained in the country, out of the 40,000 in 1492 who had subsequently been systematically exterminated under colonialism. Five hundred persons of Amerindian descent, though mixed, still remained in the north of the country in the Santa Rosa Carib community. For statistical purposes, they were classified under "mixed descent", but since they had retained their indigenous culture the Government was considering a separate classification for them.

14. Although international human rights instruments were not automatically incorporated into domestic law but required an act of Parliament to that effect, they could be directly invoked in the courts, where, however, domestic provisions took precedence, as had happened in a recent case in the Privy Council.

15. The statement in paragraph 25 of the report that the practice of racial discrimination was eliminated in the Ministries was indeed misleading. The word used should have been "minimized".

16. Ms. PLOCIA (Trinidad and Tobago), replying to the question about the content of the school curriculum and teacher training, said that human rights formed part of the social studies programme at both primary and secondary level and included education about the elimination of racial discrimination. The social studies syllabus in primary schools likewise included lessons about the different religions, ethnic groups, races and cultures to be found in the country.

17. Further consultation with the authorities of her country was required on the questions asked about the evolution of socio-economic development indicators, the imbalance of employment in the government and private sector, the housing situation, the Sugar Industry Labour Welfare Committee, the ASPnet project, the meaning of "other ethnic group" and "not stated" in paragraph 77 of the report, the sharp rise in unemployment among the "not stated" category in 1998, the high level of joblessness among the African and mixed categories, the manner in which the laws mentioned in paragraph 4 of the report punished or prohibited racial discrimination, the definition of "other" and "not stated" in paragraph 12, the sanctions imposed in the manslaughter case referred to in paragraph 121, the penalization of indirect discrimination under existing legislation and the categories of service workers, technical and associate professions and elementary occupations in the table in paragraph 75. Written replies would be supplied in due course.

18. Although the survey of recruitment practices in the public and private sectors had revealed that Indians were under-represented at the highest levels of the public sector for historical and cultural reasons, the available evidence had not substantiated allegations of racial discrimination. In the private sector, the survey had found that the number of firms owned by Indo-Trinidadians far exceeded the number belonging to other ethnic groups.

19. The Socially Displaced Persons Bill had been enacted in November 2000 and had already come into force. Information about the precise scope of its application and whether it covered racial discrimination would be supplied later.

20. The Human Rights Unit had informed representatives of the Ministry of Education of its concern about the lack of statistics on the ethnic background of students and, as a result, the Ministry was devising methods for the collection of the requisite data.

21. In reply to the question whether, in pursuance of article 6 of the Convention, the laws of Trinidad and Tobago provided for shorter and less costly procedures for obtaining remedies against acts of racial discrimination, she explained that procedure under the Equal Opportunity Act was free for the complainant. Furthermore, the introduction of public interest litigation under the Judicial Review Act would enable any person, including non-governmental organizations (NGOs), to file an action since the locus standi requirement had been abolished.

22. Her answer to the query whether racial aspects of gender discrimination would be dealt with in the National Gender Policy was that, since the latter was still being drafted, it was not yet clear what its exact content would be, but she undertook to supply the information as soon as it became available. The information from the population census taken in 2000 was still being processed. Normally such data was released about one year after the census had been held.

23. The correct name of the National Cultural Policy was the National Visual and Performing Arts Policy. The philosophy behind the policy was to promote a multi-ethnic, multicultural society based on equity, mutual respect and cultural freedom and to encourage excellence and artistic integrity in all forms of artistic expression.

24. Although NGOs had not been consulted during the drafting of the current report, all subsequent reports would be written with the extensive collaboration of NGOs. The Human Rights Unit had, however, distributed the current report to local NGOs, international human rights organizations and international NGOs and had invited their comments on it. Some had responded and their answers were being studied.

25. Mr. ABOUL-NASR, referring to the breakdown of the population given in paragraph 12, said that indigenous groups should not be subsumed in the "mixed" category, but were entitled to their own separate category. Did any organization exist to protect their interests? Were they represented in the Government? Was any effort being made to remedy past injustice towards them? To whom should any request for compensation on their behalf be addressed? Was there any procedure for dealing with applications for compensation? Was property taken from Amerindians returned to them?

26. Mr. THORNBERRY asked whether the Amerindian community had been consulted about being placed in the "mixed" category. In his opinion, it was important for a community to choose the name by which it was designated. Did that group have a specific language? What forms of cultural support did it receive?

27. Mr. TANG Chengyuan, noting that, according to the table in paragraph 75, most of the members of the defence force were of African descent, asked if the same was true of the police force. What percentage of the armed forces were volunteers? How much were they paid? If one ethnic group predominated in the police force, might that lead to injustice or unfairness?

28. Mr. de GOUTTES asked whether any legislation was being considered for the purpose of implementing article 4 of the Convention, since section 3 of the Sedition Act did not fulfil the requirements of that article. What was the prospect of new laws being passed in order to prohibit racist groups or organizations or punish the spreading of racist ideas or incitement to racial hatred?

29. Mr. MAHARAJ (Trinidad and Tobago) said that the composition of the defence force and police force gave some idea of how integrated Trinidadian society was. Trinidadians of African origin predominated in the defence force not because of any policy of discrimination, but because traditionally some ethnic groups had not applied to serve in either force. After independence persons from other groups had started to join and so the make-up of the protective services was gradually changing. New legislation had also made the services more accountable to Parliament and machinery to deal with allegations of discrimination had been set up under the new legal framework. The fact that the defence force consisted mainly of Afro-Trinidadians did not undermine national cohesion. Since 1995 the Prime Minister of Trinidad and Tobago, an Indo-Trinidadian, had enjoyed the full support of the protective forces. The idea of national cohesion had been so instilled in society that there was no danger of racial conflict erupting. Trinidad and Tobago was a melting pot where people of different ethnic groups attended each other's festivities and places of worship. Anyone from any group was entitled to hold public office. Each community had its own organizations which received money from the Government to promote cultural and educational activities.

30. If people believed that they had been deprived of their property by the colonial administration, they could go to court to apply for compensation under a Constitutional Motion on which there was no time limitation. The law provided for the possibility of awarding compensation in such cases. The State of Trinidad and Tobago would then have to take steps to recover the sum concerned from other States. Under section 14 of the Constitution, persons who believed that their rights had been infringed could apply to the High Court for redress. One such case had been heard by the High Court and Court of Appeal and was currently before the Judicial Committee of the Privy Council in London.

31. Amerindians did receive cultural support. The Government ensured even-handed treatment of all the various communities. Any person who felt that there had been any inequality could submit a complaint to the Equal Opportunity Tribunal.

32. In the past, an earlier Government of Trinidad and Tobago had wished to introduce more laws to prevent racial discrimination but, after a wide-ranging public debate, the conclusion had been reached that new laws on the subject would create problems and that it would be better to introduce machinery to investigate and deal with complaints of discrimination. It was sometimes dangerous to transplant solutions from one country to another where society was quite different. Nevertheless his Government would be prepared to consider the Committee's recommendations and to pass any laws which might be necessary.

33. Mr. ABOUL-NASR pointed out that the introduction of legislation to implement article 4 was a requirement of the Convention. The penal code had to contain a specific clause which prohibited the crime of racial discrimination so that, for example, anyone who engaged in racial abuse could be prosecuted.

34. Mr. MAHARAJ (Trinidad and Tobago) replied that any incident involving racial abuse could be dealt with under existing legislation. For example, racist marches could be banned by the Commissioner of the Police on the grounds of protecting the public interest. His delegation would supply the Committee with copies of existing laws on the promotion of racial harmony.

35. Mr. PILLAI (Country Rapporteur) thanked the delegation for its comprehensive replies to members' questions. The setting up of the Human Rights Unit had been a most welcome development in Trinidad and Tobago. While the Committee appreciated the improved quality of the country's report which contained a wealth of information, it was of the opinion that stricter compliance was needed with article 4 (b) of the Convention and that criminal legislation was required for preventive purposes. It had noted with pleasure the statement by the Attorney-General that his Government was prepared to re-examine its position and to enact appropriate legislation. It was thought that the State party's report should have contained information on the prosecution and punishment of cases related to racial discrimination.

36. The Committee had expressed concern about the lack of information on Amerindians and other small groups, an analysis of such groups having been requested during consideration of the previous periodic report. The Committee also found it hard to believe that there was no racial discrimination at all, and wished to know more about steps taken to disseminate information about the Convention and the Committee's observations. It was pleased to learn that the Human Rights Unit and other relevant bodies would play a crucial role in distributing such information. The involvement of civil society in action related to racial issues was another subject not covered in the current report, but an undertaking had been given that subsequent reports would refer to it. It was hoped that the next periodic report would also include figures to show the representation of the different groups in sectors such as the civil service and defence and to illustrate the changes that the Attorney-General had said were taking place in that regard. The Committee welcomed the promise to provide responses to the questions that had not been answered at the current session.

37. Mr. MAHARAJ (Trinidad and Tobago) said he appreciated the dialogue with the Committee and welcomed the Committee's recommendations, which would be taken fully into account. He had noted with appreciation the Committee's positive remarks on the reporting, as well as its comments on certain weaknesses. He regretted that not all questions had been answered, but his delegation undertook to obtain and provide all the information requested. Trinidad and Tobago recognized the need, in today's world, for careful management of diversity, and strove to be a beacon, in the Caribbean region, in promoting racial equality. The Government, fully aware of the growing number of conflicts stemming from internal tensions in many parts of the world, had been supporting international measures, including those leading to the establishment of the International Criminal Court, to prevent and punish any manifestations of racial discrimination or intolerance.

38. The CHAIRMAN, endorsing the Country Rapporteur's summing up, said that when the Committee adopted its concluding observations the delegation would be entitled to attend the meeting, but only in an observer capacity. He thanked all the members of the delegation for the report submitted and the responses to the questions raised. The Committee especially appreciated the presence of an Attorney-General, a person ideally placed to monitor the implementation of the Convention's provisions in a national juridical system.

39. The delegation of Trinidad and Tobago withdrew.

THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION; THIRD WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (agenda item 10) (continued) (A/CONF.189/PC.3/6 and Add.1; WCAR/INF.5 Rev.1)

40. The CHAIRMAN said that he would report to the Committee, during the following week, on the meeting of the persons chairing the human rights treaty bodies, who had decided that a statement on behalf of the six bodies should be made to the World Conference.

41. Among the documents before the Committee was a report of its contact group on progress made in preparations for the World Conference. He invited the convenor of the group to comment on the report.

42. Ms. JANUARY-BARDILL, speaking as convenor of the Committee's contact group, said that some progress had been made in the Preparatory Committee's two working groups in drafting the texts of the Declaration and Programme of Action. What the Committee should consider was the extent to which its contributions had been integrated into the texts, with a view to promoting a greater focus on its contribution to them and, if possible, increasing it. To that end, the contact group had scrutinized the two drafts in order to pick out references to the Convention and the Committee; a summary of the references was contained in the report.

43. The contact group's general observation, shared by some other bodies, was one of concern at the extent to which language had been watered down, one example being fewer references to the indivisibility and universality of racial justice. The Committee might wish to make some recommendations in that regard. A number of contentious issues remained, of course, on which positions were being adopted, such as slavery as a crime against humanity, the need for apologies, reparations and compensation, and the conflict between Israel and Palestine. While the Committee could not influence such situations, it could perhaps enhance some of the relevant recommendations, especially with regard to reparations and compensation, basing its deliberations on the documents currently before it.

44. Mr. Reshetov took the Chair.

45. Mr. ABOUL-NASR, referring to a question by Mr. SHAHI about procedure, said he thought it fruitless to try to discuss, at the current meeting, texts still being drafted. The Committee could, however, consider the contact group's comments. With regard to the sticking points mentioned by the contact group convenor, it was difficult to know what the Committee could say, although it could assert that past deeds of slavery should be condemned and

apologized for. After all, the depredations of the Holocaust against the Jews had been amply acknowledged. Perhaps the Committee could ask delegations such as that of the United States why they were raising objections.

46. The CHAIRMAN said that the Committee should perhaps proceed to consider the documents one at a time, focusing on the matters which concerned it. He noted that the draft texts referred to holocausts, in the plural, recognizing misdeeds committed against other groups besides Jews.

47. Ms. McDOUGALL, expressing gratitude to the convenor of the contact group for the introduction of the report and for her leadership of the group, agreed that it would be fruitless to attempt a discussion of texts still at a drafting stage. What the Committee could do, however, was take note of the contact group's concern about the weak wording in some parts of the draft and perhaps consider not so much the substance as ways in which the Committee might influence the Preparatory Committee with regard to what the document should look like. The Committee, at its previous session, had adopted a text intended to have its ideas included in the two draft documents, and had sent a letter to the chairpersons of all the regional groups. The Committee would need to act promptly, however, in order to influence the Preparatory Committee, because the latter's meetings were reaching their final stage; and it seemed as if that body had not so much opposed the Committee's proposals as failed to focus on them. Perhaps one way of influencing the Preparatory Committee would be for members to contact the participants from their respective regions.

48. The CHAIRMAN agreed that the Committee was facing its last chance to influence the drafting of the two texts, and hoped that it could decide on some prompt action.

49. Mr. YUTZIS agreed that the language of the proposed texts was significantly weaker than that suggested by the Committee and did not adequately reflect its expectations, in particular with regard to the draft Declaration. It was essential to do everything possible to highlight the importance of the role played by the Convention and the Committee in the language and substance of both the Declaration and Programme of Action by strengthening the text wherever necessary and correcting any omissions. The contact group should make every effort to influence the discussions of the Preparatory Committee and he agreed that it would be worthwhile for Committee members to try and influence their respective regional groups.

50. The CHAIRMAN, referring to eventual follow-up to the World Conference, pointed out that, given the obligation of all States parties to the Convention to appear regularly before the Committee, it seemed clear that the Committee was the only body which by its very nature was ideally suited to engaging in a dialogue with States on progress made towards implementation of the provisions of the Declaration and Programme of Action.

51. Mr. VALENCIA RODRIGUEZ, said that the text of the Declaration and Programme of Action should more clearly reflect the important role played by the Convention and the Committee and, with regard to the question of compensation, which was still under discussion, felt it was important that there should be a paragraph in both the Declaration and the Programme of Action on the need to provide some compensation for the victims of colonialism and racial discrimination, the effects of which continued to be felt in many countries, even after

independence. Special reference should also be made to the suffering of indigenous peoples. States should be called upon to apologize for having reaped the benefits of colonialism and racial discrimination and to provide some compensation, which would not necessarily be financial but might include "special and concrete measures" as called for in article 2, paragraph 2, of the Convention, which was a contractual obligation for States parties. That would also be in keeping with the Committee's General Recommendation XXIII on rights of indigenous peoples.

52. Mr. SHAHI, speaking on a point of order, clarified that his suggestion had been that the Committee should discuss only the parts of the draft declaration and programme of action where there were references to the Committee or the Convention, not those documents in their entirety. He agreed that it was urgent for the Committee to act quickly to try and influence the Preparatory Committee before it concluded its discussions in order to strengthen references to the Committee and the Convention but the Committee must first clearly decide what the contact group should propose during its lobbying efforts.

53. Mr. de GOUTTES said it would be difficult for the Committee to influence discussions of a more political nature, such as those involving the issue of compensation, but it was important for it to strengthen references to its contribution and that of the Convention. It was surprising that the Committee or the Convention was mentioned in only 6 of the 131 paragraphs of the draft Declaration and 17 of the 264 paragraphs of the draft Programme of Action. The Convention was the most widely ratified international instrument and its status as a symbol of the international consensus on the fight against racism should be reflected in the drafts.

54. Referring specifically to certain paragraphs of the draft Declaration and Programme of Action, he said, with regard to the former, that the square brackets in paragraph PP. 34 and paragraphs 91 and 93 (A/CONF.189/PC.3/7, pages 6 and 22 and 23) should be removed since the same language was after all used in the Convention. With regard to the draft Programme of Action, he suggested that the national commissions should be added to the list of national institutions involved in the promotion of human rights and the fight against racial discrimination listed in paragraph 110 (A/CONF.189/PC.3/8, page 26).

55. Mr. ABOUL-NASR expressed the opinion that it was most important for the Committee to ensure that the issues of concern to it were adequately reflected in the Declaration and Programme of Action. In order to convey that message to the drafting group, in addition to the lobbying efforts mentioned by Ms. McDougall, he suggested that the Chairman, the convenor of the contact group and Mr. Valencia Rodríguez should meet the Chairman of the drafting group and the Western European Group, which seemed to be the most opposed to some of the issues of importance to the Committee, and also other regional groups if necessary, in order to highlight those issues as well as stress the important role the Committee should play in follow-up to the Declaration and Programme of Action.

56. The CHAIRMAN said that a written text should be produced to support the Committee's position.

57. Ms. JANUARY-BARDILL said the document submitted by the contact group had been intended to indicate to what degree the Committee's recommendations had been reflected in the draft documents. Any submissions by the Committee would have to be in writing since it only

had observer status with the Preparatory Committee. She agreed with Mr. Aboul-Nasr that the most important point was to have the Committee's views reflected in the final documents but also felt it important for the language of the texts to be revised to highlight the role of the Committee and the Convention.

58. Mr. PILLAI agreed that it was essential that the drafts should reflect the role of the Committee and the Convention, in particular in the Programme of Action, with regard to follow-up and to strengthening the contribution of the Committee. The working groups for both the Declaration and the Programme of Action should be contacted and encouraged to clearly recognize the importance of the Committee and the Convention and the need to highlight further the role of the Committee.

59. Mr. YUTZIS said the basic question was one of proper recognition of the role played by the Committee and the Convention and adequate representation of the Committee's important concerns. The issue of special measures, including the very political question of compensation, was only one aspect of the overall neglect of the Committee's role.

60. Mr. DE MCGWEE stressed that the Preparatory Committee had a very difficult task before it and the Committee must therefore not be too demanding. It should simply ask for a paragraph to be added to the draft Declaration, where it spoke about the role of the specialized bodies and regional bodies (A/CONF.189/PC.3/7, paras. 121 and 122), which would highlight the role of the Committee. With regard to the brackets placed around passages which reflected the provisions of the Convention, included in large part as a result of reservations by certain countries to specific articles, given that implementation of the Convention had been ongoing for some 40 years it should be possible to eliminate any brackets by including a paragraph which would recall the obligations accepted by States parties under the Convention and take note of any reservations made by individual States parties.

The meeting rose at 1 p.m.